



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1996

Ms. Sandra C. Joseph
Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
Austin, Texas 78774

OR96-1021

Dear Ms. Joseph:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 19740.

The Comptroller of Public Accounts (the "comptroller") received a request for

documents and correspondence relating to a debt incurred by Startex Petroleum, owed in 1983, for fuel taxes

[S]pecifically . . . the agreements and correspondence relating to the settlement arrangement reached, and the final resolution between the State of Texas and Startex.

You contend that section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code excepts the requested information from required public disclosure.

Section 552.101 of the act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 111.006 of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential.

You state that the information contained in the requested documents was obtained from an audit of the taxpayer's business conducted under chapter 111 of the Tax Code. Section 111.006 provides to whom and for what purposes audit information may be

released. See Attorney General Opinion JM-916 (1988). Some of the documents submitted for our review contain information which appears to have been derived from an audit of the taxpayer's books and are thus confidential.

The documents submitted to this office also include reasons for the audit, which the court in *A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995) said did not have to be publicly disclosed. The court also said that while the comptroller should release information showing that an audit resulted in a deficiency assessment or refund, the actual amounts of deficiencies or refunds need not be disclosed. *Id.* at 680. The court reasoned that "it strikes the proper balance between the Tax Code and TORA for the comptroller to disclose that audits resulted in a deficiency assessment or refund warrant, but not to disclose the amounts of an assessment or refund." *Id.* However, we do not believe that this same rationale extends to the amount of a settlement agreement entered into between a taxpayer and the comptroller. A settlement agreement amount is not information that was "secured, derived, or obtained" during the course of an examination of a taxpayer's records. Tax Code § 111.006.

You argue that a person could calculate a minimum amount of a taxpayer's gross sales with knowledge of a settlement amount agreed to between the state and a company owing back taxes and penalties. See Attorney General Opinion H-661 (1975) (concluding that disclosure of amount of taxes paid by entity is prohibited under predecessor to section 111.006 if release "would indicate the amount of the taxpayer's gross sales"). We note that the amount of a settlement may reflect consideration of a number of factors, including amounts in dispute, but it is not the type of information made confidential under section 111.006 of the Tax Code. Thus, the settlement amount must be disclosed.

We have marked samples of the documents submitted to this office to indicate the types of information that may be withheld from disclosure. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 19740

Enclosures: Marked documents

cc: Mr. Jack V. Hazzard
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(w/o enclosures)